

EBI8WASC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 Cr. 605 (RJS)

5 RANDY WASHINGTON,

6 Defendant.

7 -----x

8 November 18, 2014  
9 3:15 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN

District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the  
Southern District of New York

15 CHRISTOPHER DiMASE

Assistant United States Attorney

16 DAVID GORDON

17 Attorney for Defendant

18 Also present: IRA LONDON, CJA Attorney on duty  
19  
20  
21  
22  
23  
24  
25

EBI8WASC

1 (Case called)

2 THE DEPUTY CLERK: For the government.

3 MR. DiMASE: Good afternoon, your Honor. Christopher  
4 DiMase for the government.

5 THE COURT: Mr. DiMase, good afternoon.

6 For the defendant.

7 MR. GORDON: David Gordon for Mr. Washington.

8 THE COURT: Mr. Gordon, good afternoon.

9 Mr. Washington, good afternoon.

10 It's been a while since we have been here together.  
11 This is a case in which the jury returned a guilty verdict on  
12 all counts some time ago. Sentencing has been put off a number  
13 of times to allow Mr. Washington to make certain motions, we  
14 had a change of counsel in the interim, and also more recently,  
15 after my decision of this summer, July 31st, to allow the  
16 parties to sort of confer to see whether or not they could  
17 reach some sort of agreement as to what might be considered a  
18 more just sentence, I think could only be considered a more  
19 just sentence.

20 I received a letter on Friday from Mr. DiMase advising  
21 me or apprising me of the recent developments between the  
22 parties. According to the letter, the government apparently  
23 has offered to dismiss the second 924(c) count, which would  
24 have the effect of lowering the mandatory sentence from 50  
25 years to 25 years, which is a pretty sizable deduction. The

EBI8WASC

1 government, however, has conditioned that offer on Mr.  
2 Washington waiving certain appellate rights and rights to  
3 collaterally attack the sentence and the conviction. This is  
4 apparently something Mr. Washington has declined to do. And so  
5 the government proposed that we schedule this conference to  
6 "permit the Court to allocute the defendant regarding his  
7 decision to reject the government's offer."

8 MR. GORDON: Your Honor, with respect to attacking the  
9 sentence, I think under the government's new offer, should the  
10 sentence be above the stipulated guidelines, above the top of  
11 that range, I think the government's position is he can still  
12 appeal that sentence. So he is not giving up all rights to  
13 appeal the sentence.

14 THE COURT: That wasn't clear to me.

15 MR. GORDON: It would be the same terms as in a plea  
16 agreement. Under the standard plea agreement, the defendant  
17 always has the right to appeal any sentence that is above the  
18 top of the stipulated range.

19 THE COURT: I don't know what the stipulated range is  
20 in this case.

21 Is there a range that would be stipulated to as part  
22 of an agreement?

23 MR. DiMASE: We have discussed that, and what it  
24 amounts to is the same range that is currently set forth in the  
25 PSR for Mr. Washington, 292 to 365, plus 60 months on the

EBI8WASC

1 bottom and the top end which accounts for the mandatory  
2 consecutive five year sentence on the first 924(c) count.

3 This probably bears noting. It's in the government's  
4 letter, but since the trial conviction, the United States  
5 Supreme Court decided *Alleyne*, which requires a jury to make  
6 specialized findings on things that increase a mandatory  
7 minimum sentence, for example, brandishing or discharging a gun  
8 in a 924(c) context. So as the government's letter makes  
9 clear, at this point 50 years is the mandatory minimum. You  
10 take away one of the 924(c) counts, and we are down to five on  
11 the remaining 924(c) context.

12 THE COURT: Right. But there is a mandatory 20 on the  
13 drug count.

14 MR. DiMASE: Right. The guidelines would be 290 to  
15 365, plus 60 months on the bottom and top end of that range,  
16 with a mandatory minimum of 25 years. That's what the  
17 guidelines would amount to. And I have apprised Mr. Gordon of  
18 that range. I think Mr. Gordon's position is it is kind of  
19 academic because Mr. Washington is not interested in any  
20 agreement where he is waiving his appellate and collateral  
21 attack rights. I think the competency issue may be the issue  
22 that he is seeking to litigate down the road.

23 I should note, as made clear in the government's  
24 letter, Mr. Washington would also not be required to waive any  
25 claim of ineffective assistance of his trial counsel, Mr.

EBI8WASC

1 Freeman, or Mr. Gordon for that matter, as part of this  
2 agreement. Under the attorney general's new policy, it has  
3 made very clear in plea agreements with the government that  
4 defendant need not forfeit those rights even where they make a  
5 general appellate waiver.

6 THE COURT: I am not sure what appellate issues Mr.  
7 Washington is focused on. Maybe he hasn't fully focused on  
8 them yet. But of the motions made so far, the motion relating  
9 to his competence to engage in plea negotiations, and I guess  
10 by extension to go to trial and be sentenced, it was one that  
11 was made and rejected by me. So if he wants to appeal that,  
12 the government is saying that's a deal breaker on the offer,  
13 right?

14 MR. DiMASE: Yes, except any appellate challenge  
15 besides ineffective assistance of counsel claim or a challenge  
16 to a sentence above the top of the guidelines range, as we  
17 discussed here today, would be barred by the agreement.

18 I should note this is the exact same appellate waiver  
19 that any other defendant entering into any plea agreement,  
20 usually in the context of a pretrial plea, would be required to  
21 agree to as part of their plea agreement. And here we are  
22 taking the extraordinary remedy in dismissing the count  
23 posttrial.

24 THE COURT: I get that, but I think that the current  
25 policy of the Department of Justice would be not to file the

EBI8WASC

1 second 924(c) in a case like this one, right?

2 If we hadn't had a trial and this case was getting  
3 ready to go to trial, according to the attorney general's new  
4 policy with respect to the filing of a second 924(c), it  
5 probably would not be filed, right?

6 MR. DiMASE: I am not aware of any formal policy of  
7 the attorney general on the issue of multiple 924(c)s. There  
8 certainly has been quite a bit of guidance lately on PFIs on  
9 (b)(1)(A), (b)(1)(B) mandatory minimum sentences, but I don't  
10 believe there has been any formal policy in the area of 924(c)  
11 charges. And that's an issue that is certainly being worked  
12 through.

13 THE COURT: All right. Maybe we will come to this in  
14 a minute.

15 Mr. Gordon, is there something you would like to say?

16 MR. GORDON: I am troubled by the competency issue. I  
17 know your Honor made a ruling, but we have a situation where  
18 two psychologists said that, because of Mr. Washington's  
19 cognitive impairment, there is a serious issue as to whether he  
20 understood the consequences of losing trial.

21 THE COURT: I don't think that's really what they  
22 said.

23 MR. GORDON: Also, that he had a totally unrealistic  
24 view of his chances of winning the trial.

25 THE COURT: I think they said it might affect his

EBI8WASC

1 judgment in those regards, but I don't think they went so far  
2 as to suggest that he was not competent, as that term is  
3 defined, and I don't think there is a different definition in  
4 the plea context than there is in the trial context or the  
5 sentencing context.

6 MR. GORDON: Your Honor, I think at a hearing, had  
7 your Honor held a hearing on exactly what the psychologists  
8 meant by their reports, as to the extent of his impairment and  
9 as to whether he could intelligently make a decision whether or  
10 not to plead guilty given his impairment, I think your Honor  
11 might have reached a different result.

12 THE COURT: I didn't see anything in the report that  
13 even made this an issue. I have ruled on that.

14 MR. GORDON: I don't expect your Honor to reach a  
15 different conclusion. However, it seems to me I don't know  
16 that that's something I can waive. If you're wrong, then he  
17 should be given an opportunity to accept the original offer.  
18 And the government is saying for him to litigate that on  
19 appeal, he has got to be willing to spend the rest of his life  
20 in jail if he loses. He would have to serve an additional 25  
21 years if he loses that argument on appeal.

22 The government is saying that he can appeal the  
23 effectiveness of counsel issue. If he wins that, all that  
24 would happen is it would be sent back to you. The only way he  
25 can win it on appeal is if the circuit said that you were wrong

EBI8WASC

1 in finding that there was no reasonable probability that he  
2 would have accepted such a plea so you didn't have to get to  
3 the issue of who is telling the truth. It would be sent back  
4 to you for a hearing, in which after hearing you might reach  
5 the same conclusion, you might not, or you still might not  
6 believe Mr. Washington.

7 THE COURT: I get all that. If he doesn't take this  
8 deal, then Mr. Washington retains all the abilities to appeal  
9 any ruling that I have made. He can appeal anything.

10 MR. GORDON: That's correct. But it seems to me, I  
11 haven't examined the trial record carefully enough for me to  
12 feel that every possible issue would be frivolous, but my gut  
13 reaction is he is not going to win on the search issue, whether  
14 he had standing, and I don't think he is going to win on  
15 whether he had a fair trial. It seems to me the only issues  
16 that are probably viable on appeal are the ineffective  
17 assistance of counsel issue and also the competency issue.

18 THE COURT: The ineffective assistance of counsel he  
19 will be able to appeal with the government's agreement.

20 MR. GORDON: Even if he wins that, he is only  
21 ultimately going to do better if your Honor finds in his favor  
22 on remand.

23 THE COURT: I am not sure what you're telling me that  
24 I didn't already understand.

25 Mr. Washington, the bottom line is this. The



EBI8WASC

1 government has made this offer. I can't order them to do this.  
2 They have the ability to dismiss this second 924(c), which  
3 would have the impact of reducing your mandatory sentence from  
4 50 years to 25 years. That's a pretty significant difference.  
5 I can't order them to do it. So they get to attach the  
6 conditions that they want to attach to that decision. The  
7 implications, of course, are that if you turn this deal down  
8 and you appeal and you don't win on appeal, or, as Mr. Gordon  
9 said, you even win on appeal, but it comes back to me to  
10 determine your competence, and I have a hearing and ultimately  
11 determine that you were not incompetent, then you're stuck with  
12 the 50 years.

13 I want to make sure you understand that. Do you  
14 understand those are the stakes here? I can't order them later  
15 to say, well, come on, just drop that second count. They don't  
16 have to listen to me. They don't have to listen to me on any  
17 of this. So the Supreme Court has made it clear they are  
18 certainly allowed to condition their offers this way. So I  
19 think the best that anybody can do is ask them to reconsider,  
20 which I have done and Mr. Gordon has done. But you should  
21 understand that there's no guarantees that they are going to do  
22 it again. This is a one-time-only offer. Do you understand  
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: And you still want to forgo, not take

EBI8WASC

1 advantage of this offer, because you want to be able to appeal  
2 without any restrictions, that's what you wish?

3 I just want to make sure that he is not going to later  
4 say that he didn't understand.

5 That's what you wish to do?

6 THE DEFENDANT: Say it again.

7 THE COURT: Is it your position that you're willing to  
8 reject this offer the government has made to come down from a  
9 50 year mandatory minimum sentence to a 25 year mandatory  
10 minimum sentence? That's their offer. They can argue for a  
11 higher sentence, but unless they do this, I can't sentence you  
12 to less than 50 years. So you're willing to give up their  
13 offer to dismiss the second gun count, which carries a  
14 mandatory consecutive 25 years on top of the 25 years that are  
15 already required, you're willing to give up that offer because  
16 you don't want to have any restriction on your appellate  
17 rights?

18 MR. GORDON: Before he answers that question, I have a  
19 suggestion. Perhaps it might be wise, given what is at stake  
20 here, is for your Honor to assign another attorney, an  
21 additional attorney, to review these issues with Mr. Washington  
22 between now and the sentence date, to see if perhaps someone  
23 else can get through to him that this would be a big mistake to  
24 not accept the government's offer. I don't see any harm being  
25 done by having another opinion here. With respect to the

EBI8WASC

1 sentence day, it would not have to change.

2 THE COURT: It might have to change. Sentencing is  
3 just a few weeks away.

4 MR. GORDON: It might have to change a little bit, but  
5 not very much, and this is pretty important.

6 THE COURT: It's definitely important.

7 MR. GORDON: My sentencing submission is due tomorrow.  
8 There is really nothing I can submit. The mandatory minimum is  
9 50 years. There is not much I can say. So I don't really  
10 intend to submit anything.

11 THE COURT: I think that's fine. I can tell you  
12 confidently I am not going to sentence him to more than 50  
13 years under the current posture of this case.

14 MR. GORDON: That's why I have nothing to submit.

15 THE COURT: That's fine.

16 Mr. DiMase, do you have any thoughts about the  
17 appointment of a sort of shadow counsel to just advise Mr.  
18 Washington with respect to this issue of the offer made by the  
19 government?

20 MR. DiMASE: I have no objection to that plan if the  
21 Court thinks it would assist Mr. Washington. The plan had  
22 been, if this request had been made today, to have Mr.  
23 Washington allocuted and then move forward. But that said, if  
24 he is not going to allocute today and he wants to speak to a  
25 second attorney, we are not going to withdraw the offer that's

EBI8WASC

1 been made. But there has to be an end point to it somewhere,  
2 but it need not be today.

3 MR. GORDON: At this point, Mr. Washington thinks he  
4 is not going to change his mind, and he doesn't want the  
5 sentence put off. So I am not going to ask that the date be  
6 changed now, but I think assigning another lawyer to at least  
7 talk to him, perhaps he might change his position about the  
8 sentence date. Right now he wants to proceed, which I think is  
9 not necessarily in his interest.

10 MR. FREEMAN: May I speak to Mr. Gordon for a second?

11 THE COURT: Mr. Freeman, who is prior counsel, is  
12 here, and he has a right to be here, as does anybody. It's a  
13 public courtroom. So if you wanted to confer with Mr. Gordon,  
14 that's fine.

15 (Pause)

16 THE COURT: Mr. Gordon.

17 MR. GORDON: Your Honor, at this point I think we  
18 should keep the sentence date, but if your Honor would assign  
19 counsel, I will certainly bring counsel up to speed to discuss  
20 with Mr. Washington and me the government's offer and whether  
21 or not he should take it.

22 THE COURT: OK. Let me find out who is on CJA duty  
23 today, unless somebody knows. I will have to make that call.  
24 Maybe we will take a short break just so I can determine who it  
25 is, confirm that it is not someone who would have a conflict in

EBI8WASC

1 this case, and once I have the name I can make the appointment.  
2 I don't know that that lawyer can get here on short notice. If  
3 they can, I will have them come over. Otherwise I will have  
4 them follow up later.

5 MR. DiMASE: I have one point to add. I think the  
6 government would like to have a resolution to whether or not  
7 Mr. Washington wants to avail himself to this offer before the  
8 sentencing occurs. I think the parties on both sides deserve  
9 to know what is going to happen on the day of sentence and not  
10 be in a position where there is a 25 year swing in a potential  
11 mandatory minimum based on defendant's decision that morning.

12 THE COURT: It's not complicated math, but I don't  
13 mind having the resolution before the sentencing.

14 That means either the offer expires some date before  
15 December 3rd or we push back the sentencing a reasonable period  
16 of time to allow counsel and Mr. Washington and perhaps Mr.  
17 Gordon to confer a little bit. Why don't we first find out who  
18 is on CJA duty to see if the availability of that lawyer might  
19 inform the decision. It sounds like Mr. Washington wants to go  
20 forward on December 3. I think ideally we all would like to  
21 keep this on that track. It is a simple decision that has to  
22 be made. It's an important decision, and it's very important  
23 that Mr. Washington consider the ramifications, the  
24 consequences of this decision, but I don't think it should take  
25 too long to do it as long as we can line up the lawyer who is

EBI8WASC

1 going to talk to him about it.

2 MR. DiMASE: To be clear, if the defendant does want  
3 more time, we don't object to moving the sentencing date, but I  
4 think the government will provide a deadline for the offer  
5 before the sentencing date in order to have some clarity.

6 THE COURT: Mr. Washington, I think it is not a bad  
7 idea to have a second opinion. Do you have any objection to  
8 talking to another lawyer?

9 THE DEFENDANT: No.

10 THE COURT: I think it's in your interest. There is  
11 no harm that could come of it. Ultimately this is your  
12 decision, but I think it's not a bad thing to have a little  
13 more time to think about it and perhaps have another lawyer  
14 looking at the issue and giving you his or her thoughts on the  
15 subject. OK?

16 THE DEFENDANT: Yes.

17 THE COURT: While we are waiting for that, I wrote an  
18 opinion in which I provided my thoughts. I can't call it more  
19 than that, and I can't compel anybody to do anything here. The  
20 government certainly has no obligation to withdraw that second  
21 924(c). I appealed to the government's sense of justice in  
22 doing the right thing because it seems to me that there is  
23 something troubling about a case in which the offer was ten  
24 years for the crime, so the perception was the crime before  
25 plea warranted ten years worth of punishment but after trial it

EBI8WASC

1 was worth 50 years worth of punishment, which seems to me that  
2 the government is more interested in deterring people going to  
3 trial than deterring crime, which I think is a bad perception  
4 to have out there.

5 I think tying these conditions to this offer, which I  
6 commend them for, because I think it was a good decision to  
7 make this offer, but tying this offer to the waiver of  
8 appellate rights also does look small. It looks as though this  
9 decision is not based on prosecutorial judgment as to what  
10 would be an appropriate sentence, but, rather, as a quid pro  
11 quo for giving up appellate rights, as though the waiver of  
12 appellate rights is worth 25 years, or put the other way, the  
13 refusal to waive those rights needs to be deterred and punished  
14 to the tune of 25 years. I think that doesn't look good. It  
15 seems to me that the government should have confidence in its  
16 own proof and confidence in its positions on appeal. It would  
17 seem to me that the government should decide what is the  
18 appropriate sentence, and what is the appropriate mandatory  
19 sentence, and if it isn't 50 years, that shouldn't turn on  
20 whether or not the defendant is willing or not willing to waive  
21 his appellate rights.

22 That's just my opinion. I can't order anybody to do  
23 anything, but that's what it seems to me. It's my reference to  
24 Title 21, Section 851, where the attorney general has made it  
25 clear that sort of reflexive filing of very draconian mandatory

EBI8WASC

1     sentencings in the context of prior felony informations in 851,  
2     that has been revisited and now it's the exception that that  
3     would be brought. It's not to be used as a trial penalty.  
4     There does seem to be some tension between that policy and the  
5     policy as it either exists or used to exist with 924(c)s. I  
6     would think the same criticisms that would apply to one would  
7     also apply to the other, and there is a certain inconsistency  
8     in adopting a policy like the attorney general has announced  
9     for prior felony informations under 851 and yet persisting with  
10    this policy under 924(c)s.

11           There are some differences, and maybe one can  
12    articulate a reason for a different policy, but there does seem  
13    to be a tension, and it seems to me that if the government's  
14    view is that 50 years is too long, then they should take the 25  
15    year mandatory consecutive off. The decision as to whether it  
16    is unjust, whether it is not the right thing, shouldn't turn on  
17    whether or not the defendant is going to waive his appellate  
18    rights it seems to me.

19           In any event, Ira London is the attorney who is on CJA  
20    duty today. I saw him earlier. I don't know if he is still  
21    around. I can reach out to him to see if he is around. It  
22    might be easier while everybody is in the building to have them  
23    huddle up. Any objection to that?

24           MR. GORDON: No.

25           THE COURT: We will make that call. So everybody sit



EBI8WASC

1 tight while we do that, and then I will be back with you  
2 shortly.

3 I didn't mean to lecture the government. The  
4 government has tremendous power in many regards. They have the  
5 power to offer a 10 year deal, the power to offer a 25 year  
6 deal, the power to offer a mandatory 50 year deal, and I think  
7 ultimately they have to determine what is just, what is right,  
8 and whether or not that decision turns on the quid pro quo of  
9 waiving certain rights or certain appellate arguments. We are  
10 really talking about just one or two arguments that would  
11 survive and be real. So it seems to me that maybe we are not  
12 arguing about that much.

13 So think about that, Mr. DiMase, while I am reaching  
14 out to Mr. London. It's not something you can decide today, I  
15 am sure, but do think about it.

16 MR. DiMASE: Yes, your Honor.

17 (Recess)

18 THE COURT: I will note that Mr. London has arrived.

19 Thank you, Mr. London.

20 MR. LONDON: Good afternoon, your Honor. Twice in one  
21 day.

22 THE COURT: That's right.

23 Mr. London is the CJA lawyer on duty, and so I don't  
24 know, Mr. London, if anybody has sort of buttonholed you and  
25 told you why you are here.

EBI8WASC

1 MR. DiMASE: He just got here, your Honor.

2 THE COURT: In a nutshell, here is the situation. Mr.  
3 Washington, who is seated next to you, was charged in an  
4 indictment. In broad strokes, he was offered a plea deal by  
5 the government that involved a sentence of about ten years. He  
6 declined that offer and went to trial. The government  
7 superseded in, I guess, the interim, and Mr. Washington was  
8 ultimately convicted on two 924(c) counts with a prior felony  
9 information on the narcotics count, so at the time a mandatory  
10 52 year sentence. An intervening Supreme Court case has made  
11 that a mandatory 50 year sentence because the jury made no  
12 special finding on brandishing the firearm for the first  
13 924(c), which would have made it a seven year mandatory  
14 consecutive. So instead it's just a five year consecutive, but  
15 not that much difference.

16 So, now the situation is that Mr. Washington is facing  
17 a mandatory term of imprisonment of 50 years. There have been  
18 various motions posttrial. I have ruled on those. But in  
19 ruling and denying the motions made by defendant, I did ask or  
20 implore the government to consider whether it might be more  
21 just to withdraw or dismiss the second 924(c) count. The  
22 government, I think to its credit, has agreed to do that and  
23 has offered a plea deal of a mandatory 25 years, with a  
24 guidelines range that, in the government's view, is higher than  
25 that but takes the second 924(c) off the table. But that offer

EBI8WASC

1 is contingent on Mr. Washington waiving certain appellate  
2 rights and collateral attack rights, which he thus far is  
3 inclined to reject.

4 Mr. Gordon is representing him. Mr. Freeman  
5 previously represented Mr. Washington. We have a sentencing  
6 date of December 3rd. And the thought was it might be useful  
7 for Mr. Washington to get a second pair of ears as to the  
8 second opinion from counsel just with respect to the offer made  
9 by the government. So that's what you're being proposed as, as  
10 sort of the second pair of eyes and ears just to advise Mr.  
11 Washington with respect to the government's recent offer.

12 I was hoping that you could meet with him, get  
13 information from Mr. Gordon and from the government, as you  
14 need, but meet with Mr. Washington, discuss the offer, advise  
15 him on it, and then perhaps report back to the Court with a  
16 letter by December 1, if that's enough time. We have a  
17 sentencing date of December 3. That's what makes this a little  
18 tight. Mr. Washington would prefer not to adjourn the  
19 sentencing. But if it were impossible for you to meet that  
20 tight deadline, I might be inclined to do a very short  
21 adjournment of maybe a week or ten days.

22 In very broad strokes, that's where we stand.

23 MR. LONDON: May I have a moment, Judge?

24 I will be happy to comply with the Court's schedule.  
25 I will meet with Mr. Washington next week at the jail, and I

EBI8WASC

1 will confer with Mr. Gordon briefly.

2 THE COURT: You think you can write a letter to the  
3 Court, just advising what Mr. Washington's views are, or do you  
4 think we need to have another conference to do this in person?

5 MR. LONDON: If that's appropriate, I will.

6 THE COURT: The government has requested that we  
7 resolve the issue of the plea offer before sentencing. Mr.  
8 Washington has requested that we go forward with sentencing on  
9 December 3rd, so that doesn't leave a ton of time in between.

10 Mr. DiMase, you wanted me to allocute Mr. Washington  
11 with respect to the offer if he decides to decline it, right?

12 MR. DiMASE: That's correct, your Honor. I think it's  
13 appropriate here. Given Mr. Washington's allegations about the  
14 plea offer made prior to trial, I just foresee the possibility  
15 of this coming up again, and I think it's appropriate to  
16 allocute him.

17 THE COURT: We are scheduled for a sentencing on  
18 December 3rd at 10:30. Let's plan on coming back together  
19 December 1st at 2:30, if you're all available.

20 MR. GORDON: I am on duty that day in the Southern  
21 District so I am certainly available.

22 THE COURT: You will be around. It shouldn't take  
23 long.

24 MR. LONDON: That's fine.

25 MR. DiMASE: That's fine, your Honor.

EBI8WASC

1 THE COURT: All right. Let's see where we are then.

2 Mr. DiMase, you think about what I said.

3 Mr. Washington, you think about what I said, and then

4 December 1, I guess, hopefully you can tell me what your

5 decision is. All right? Any questions that you have now?

6 THE DEFENDANT: No.

7 THE COURT: Is there anything else we should cover

8 while we are here today?

9 MR. GORDON: I don't think so.

10 MR. DiMASE: Nothing from the government.

11 THE COURT: Let's see where we get.

12 Mr. Gordon, anything else we need to do on the record?

13 MR. GORDON: No.

14 THE COURT: Thanks. Have a good day.

15 (Adjourned)

16

17

18

19

20

21

22

23

24

25